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(b) *Alternative due date.* A filer that includes the statement specified in § 4010.8(b)(1) with its submission to the PBGC by the date specified in paragraph (a) of this section must submit the actuarial information specified in § 4010.8(b)(2) within 15 days after the deadline for filing the plan's annual report (Form 5500 series) for the plan year ending within the filer's information year (see § 2520.104a–5(a)(2) of this title).

(c) *How to file.* Requests and information may be delivered by mail, by delivery service, by hand, or by any other method acceptable to the PBGC, to: Corporate Finance and Negotiations Department, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20005–4026.

(d) *Date when information filed.* Information filed under this part is considered filed—

(1) On the date of the United States postmark stamped on the cover in which the information is mailed, if—

(i) The postmark was made by the United States Postal Service; and

(ii) The document was mailed postage prepaid, properly addressed to the PBGC; or

(2) If the conditions stated in paragraph (d)(1) of this section are not met, on the date it is received by the PBGC. Information received on a weekend or Federal holiday or after 5:00 p.m. on a weekday is considered filed on the next regular business day.

(e) *Computation of time.* In computing any period of time under this part, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a weekend or Federal holiday, in which event the period runs until the end of the next day that is not a weekend or Federal holiday.

§ 4010.11 Waivers and extensions.

The PBGC may waive the requirement to submit information with respect to one or more filers or plans or may extend the applicable due date or dates specified in § 4010.10 of this part. The PBGC will exercise this discretion in appropriate cases where it finds convincing evidence supporting a waiver or extension; any waiver or extension

may be subject to conditions. A request for a waiver or extension must be filed in writing with the PBGC at the address provided in § 4010.10(c) no later than 15 days before the applicable date specified in § 4010.10 of this part, and must state the facts and circumstances on which the request is based.

§ 4010.12 Confidentiality of information submitted.

In accordance with § 4901.21(a)(3) of this chapter and section 4010(c) of ERISA, any information or documentary material that is not publicly available and is submitted to the PBGC pursuant to this part shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

§ 4010.13 Penalties.

If all of the information required under this part is not provided within the specified time limit, the PBGC may assess a separate penalty under section 4071 of ERISA against the filer and each member of the filer's controlled group (other than an exempt entity) of up to \$1,100 a day for each day that the failure continues. The PBGC may also pursue other equitable or legal remedies available to it under the law.

[61 FR 34022, July 1, 1996, as amended at 62 FR 36994, July 10, 1997]

§ 4010.14 OMB control number.

The collection of information requirements contained in this part have been approved by the Office of Management and Budget under OMB control number 1212–0049.

PART 4011—DISCLOSURE TO PARTICIPANTS

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APPENDIX A TO PART 4011—MODEL PARTICIPANT NOTICE

APPENDIX B TO PART 4011—TABLE OF MAXIMUM GUARANTEED BENEFITS

AUTHORITY: 29 U.S.C. 1302(b)(3), 1311.

SOURCE: 61 FR 34026, July 1, 1996, unless otherwise noted.

§ 4011.1 Purpose and scope.

This part prescribes rules and procedures for complying with the requirements of section 4011 of ERISA. This part applies for any plan year beginning on or after January 1, 1995, with respect to any single-employer plan that is covered by section 4021 of ERISA.

§ 4011.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: contributing sponsor, employer, ERISA, normal retirement age, PBGC, person, plan, plan administrator, plan year, and single-employer plan.

In addition, for purposes of this part:

Participant has the meaning in § 4041.2 of this chapter.

Participant Notice means the notice required pursuant to section 4011 of ERISA and this part.

§ 4011.3 Notice requirement.

(a) *General.* Except as otherwise provided in this part, the plan administrator of a plan must provide a Participant Notice for a plan year if a variable rate premium is payable for the plan under section 4006(a)(3)(E) of ERISA and part 4006 of this chapter for that plan year, unless, for that plan year or for the prior plan year, the plan meets the Deficit Reduction Contribution (“DRC”) Exception Test in paragraph (b) of this section. The DRC Exception Test may be applied using the Small Plan DRC Exception Test rules in § 4011.4(b), where applicable.

(b) *DRC Exception Test*—(1) *Basic rule.* A plan meets the DRC Exception Test for a plan year if it is exempt from the requirements of section 302(d) of ERISA for that plan year by reason of section 302(d)(9), without regard to the small plan exemption in section 302(d)(6)(A).

(2) *1994 plan year.* A plan satisfies the DRC Exception Test for the 1994 plan year if, for any two of the plan years beginning in 1992, 1993, and 1994 (whether or not consecutive), the plan satisfies any requirement of section 302(d)(9)(D)(i) of ERISA.

(c) *Penalties for non-compliance.* If a plan administrator fails to provide a Participant Notice within the specified time limit or omits material information from a Participant Notice, the PBGC may assess a penalty under section 4071 of ERISA of up to \$1,100 a day for each day that the failure continues.

[61 FR 34026, July 1, 1996, as amended at 62 FR 36994, July 10, 1997]

§ 4011.4 Small plan rules.

(a) *1995 plan year exemption.* A plan that is exempt from the requirements of section 302(d) of ERISA for the 1994 or 1995 plan year by reason of section 302(d)(6)(A) is exempt from the Participant Notice requirement for the 1995 plan year.

(b) *Small Plan DRC Exception Test.* In determining whether the Participant Notice requirement applies for a plan year beginning after 1995, the plan administrator of a plan that is exempt from the requirements of section 302(d) of ERISA by reason of section 302(d)(6)(A) for the plan year being tested may use any one or more of the following rules in determining whether the plan meets the DRC Exception Test for that plan year:

(1) *Use of Schedule B data.* For any plan year for which the plan is exempt from the requirements of section 302(d) of ERISA by reason of section 302(d)(6)(A), provided both of the following adjustments are made—

(i) The market value of the plan’s assets as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the actuarial value of the plan’s assets as of the valuation date; and

(ii) The plan’s current liability for all participants’ total benefits as of the beginning of the plan year (as required to be reported on Form 5500, Schedule B) may be substituted for the plan’s current liability as of the valuation date.

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(2) *Pre-1995 plan year 90 percent test.* A plan that is exempt from the requirements of section 302(d) of ERISA for a pre-1995 plan year by reason of section 302(d)(6)(A) satisfies the requirements of section 302(d)(9)(D)(i) for that pre-1995 plan year if the ratio of its assets to its current liability for that plan year is at least 90 percent. For this purpose, the plan's assets are valued without subtracting any credit balance under section 302(b) of ERISA, and its current liability is determined using the highest interest rate allowable for the plan year under section 302(d)(7)(C).

(3) *Interest rate adjustment.* If the interest rate used to calculate current liability for a plan year is less than the highest rate allowable for the plan year under section 302(d)(7)(C) of ERISA, the current liability may be reduced by one percent for each tenth of a percentage point by which the highest rate exceeds the rate so used.

§ 4011.5 Exemption for new and newly-covered plans.

A plan (other than a plan resulting from a consolidation or spinoff) is exempt from the Participant Notice requirement for the first plan year for which the plan must pay premiums under parts 4006 and 4007 of this chapter.

§ 4011.6 Mergers, consolidations, and spinoffs.

In the case of a plan involved in a merger, consolidation, or spinoff transaction that becomes effective during a plan year, the plan administrator shall apply the requirements of section 4011 of ERISA and of this part for that plan year in a reasonable manner to ensure that the Participant Notice serves its statutory purpose.

§ 4011.7 Persons entitled to receive notice.

The plan administrator must provide the Participant Notice to each person who is a participant, a beneficiary of a deceased participant, an alternate payee under an applicable qualified domestic relations order (as defined in section 206(d)(3) of ERISA), or an employee organization that represents any group of participants for purposes of collective bargaining. To determine

who is a person that must receive the Participant Notice for a plan year, the plan administrator may select any date during the period beginning with the last day of the previous plan year and ending with the day on which the Participant Notice for the plan year is due, provided that a change in the date from one plan year to the next does not exclude a substantial number of participants and beneficiaries.

§ 4011.8 Time of notice.

The plan administrator must issue the Participant Notice for a plan year no later than two months after the deadline (including extensions) for filing the annual report for the previous plan year (see § 2520.104a-5(a)(2) of this title). The plan administrator may change the date of issuance from one plan year to the next, provided that the effect of any change is not to avoid disclosing a minimum funding waiver under § 4011.10(b)(5) or a missed contribution under § 4011.10(b)(6). When the President of the United States declares that, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), a major disaster exists, the PBGC may extend the due date for providing the Participant Notice by up to 180 days.

§ 4011.9 Manner of issuance of notice.

The Participant Notice shall be issued by using measures reasonably calculated to ensure actual receipt by the persons entitled to receive it. It may be issued together with another document, such as the summary annual report required under section 104(b)(3) of ERISA for the prior plan year, but must be in a separate document.

§ 4011.10 Form of notice.

(a) *General.* The Participant Notice (and any additional information under paragraph (d) of this section) shall be readable and written in a manner calculated to be understood by the average plan participant and not to mislead recipients. The Model Participant Notice in appendix A to this part (when properly completed) is an example of a Participant Notice meeting the requirements of this section.

(b) *Content.* The Participant Notice for a plan year shall include—

(1) Identifying information (the name of the plan and the contributing sponsor, the employer identification number of the contributing sponsor, the plan number, the date (at least the month and year) on which the Participant Notice is issued, and the name, title, address and telephone number of the person(s) who can provide information about the plan's funding);

(2) A statement to the effect that the Participant Notice is required by law;

(3) The Notice Funding Percentage for the plan year, determined in accordance with paragraph (c) of this section, and the date as of which the Notice Funding Percentage is determined;

(4) A statement to the effect that—

(i) To pay pension benefits, the employer is required to contribute money to the plan over a period of years;

(ii) A plan's funding percentage does not take into consideration the financial strength of the employer; and

(iii) The employer, by law, must pay for all pension benefits, but benefits may be at risk if the employer faces a severe financial crisis or is in bankruptcy;

(5) If, for any of the five plan years immediately preceding the plan year, the plan has been granted a minimum funding waiver under section 303 of ERISA that has not (as of the end of the prior plan year) been fully repaid, a statement identifying each such plan year and an explanation of a minimum funding waiver;

(6) For any payment subject to the requirements of this paragraph, a statement identifying the due date for the payment and noting that the payment has or has not been made and (if made) the date of the payment. Once participants have been notified (under this part or title I of ERISA) of a missed contribution that is subject to the requirements of this paragraph, the delinquency need not be reported in a Participant Notice for a subsequent plan year if the missed contribution has been paid in full by the time the subsequent Participant Notice is issued. The payments subject to the requirements of this paragraph are—

(i) Any minimum funding payment necessary to satisfy the minimum

funding standard under section 302(a) of ERISA for any plan year beginning on or after January 1, 1994, if not paid by the earlier of the due date for that payment (the latest date allowed under section 302(c)(10)) or the date of issuance of the Participant Notice; and

(ii) An installment or other payment required by section 302 of ERISA for a plan year beginning on or after January 1, 1995, that was not paid by the 60th day after the due date for that payment;

(7) A statement to the effect that if a plan terminates before all pension benefits are fully funded, the PBGC pays most persons all pension benefits, but some persons may lose certain benefits that are not guaranteed;

(8) A summary of plan benefits guaranteed by the PBGC, with an explanation of the limitations on such guarantee; and

(9) A statement that further information about the PBGC's guarantee may be obtained by requesting a free copy of the booklet "Your Guaranteed Pension" from Consumer Information Center, Dept. YGP, Pueblo, Colorado 81009. The Participant Notice may include a statement that the booklet may be obtained through electronic access via the World Wide Web from the PBGC Homepage at <http://www.pbgc.gov>.

(c) *Notice Funding Percentage*—(1) *General rule.* The Notice Funding Percentage that must be included in the Participant Notice for a plan year is the "funded current liability percentage" (as that term is defined in section 302(d)(9)(C) of ERISA) for that plan year or the prior plan year.

(2) *Small plans.* A plan that is exempt from the requirements of section 302(d) of ERISA for a plan year by reason of section 302(d)(6)(A) may determine its funded current liability percentage for that plan year using the Small Plan DRC Exception Test rules in §4011.4(b).

(d) *Additional information.* The plan administrator may include with the Participant Notice any information not described in paragraph (b) of this section only if it is in a separate document.

(e) *Foreign languages.* In the case of a plan that (as of the date selected under §4011.7) covers the numbers or percentages specified in §2520.104b-10(e) of this

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title of participants literate only in the same non-English language, the plan administrator shall provide those participants either—

(1) An English-language Participant Notice that prominently displays a legend, in their common non-English language, offering them assistance in that language, and clearly setting forth any procedures participants must follow to obtain such assistance, or

(2) A Participant Notice in that language.

[61 FR 34026, July 1, 1996, as amended at 65 FR 75165, Dec. 1, 2000]

§ 4011.11 OMB control number.

The collections of information contained in this part have been approved by the Office of Management and Budget under OMB control number 1212–0050.

APPENDIX A TO PART 4011—MODEL PARTICIPANT NOTICE

The following is an example of a Participant Notice that satisfies the requirements of § 4011.10 when the required information is filled in (subject to §§ 4011.10(d)–(e), where applicable).

NOTICE TO PARTICIPANTS OF [PLAN NAME]

The law requires that you receive information on the funding level of your defined benefit pension plan and the benefits guaranteed by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency. YOUR PLAN'S FUNDING

As of [DATE], your plan had [INSERT NOTICE FUNDING PERCENTAGE (DETERMINED IN ACCORDANCE WITH § 4011.10(c))] percent of the money needed to pay benefits promised to employees and retirees.

To pay pension benefits, your employer is required to contribute money to the pension plan over a period of years. A plan's funding percentage does not take into consideration the financial strength of the employer. Your employer, by law, must pay for all pension benefits, but your benefits may be at risk if your employer faces a severe financial crisis or is in bankruptcy.

[INCLUDE THE FOLLOWING PARAGRAPH ONLY IF, FOR ANY OF THE PREVIOUS FIVE PLAN YEARS, THE PLAN HAS BEEN GRANTED AND HAS NOT FULLY REPAID A FUNDING WAIVER.]

Your plan received a funding waiver for [LIST ANY OF THE FIVE PREVIOUS PLAN YEARS FOR WHICH A FUNDING WAIVER WAS GRANTED AND HAS NOT BEEN FULLY REPAID]. If a company is experiencing temporary financial hardship, the Internal Revenue Service may grant a funding

waiver that permits the company to delay contributions that fund the pension plan.

[INCLUDE THE FOLLOWING WITH RESPECT TO ANY UNPAID OR LATE PAYMENT THAT MUST BE DISCLOSED UNDER § 4011.10(b)(6):]

Your plan was required to receive a payment from the employer on [LIST APPLICABLE DUE DATE(S)]. That payment [has not been made] [was made on [LIST APPLICABLE PAYMENT DATE(S)]]].

PBGC GUARANTEES

When a pension plan ends without enough money to pay all benefits, the PBGC steps in to pay pension benefits. The PBGC pays most people all pension benefits, but some people may lose certain benefits that are not guaranteed.

The PBGC pays pension benefits up to certain maximum limits.

- The maximum guaranteed benefit is [INSERT FROM TABLE IN APPENDIX B] per month or [INSERT FROM TABLE IN APPENDIX B] per year for a 65-year-old person in a plan that terminates in [INSERT APPLICABLE YEAR].

- The maximum benefit may be reduced for an individual who is younger than age 65. For example, it is [INSERT FROM TABLE IN APPENDIX B] per month or [INSERT FROM TABLE IN APPENDIX B] per year for an individual who starts receiving benefits at age 55. [IN LIEU OF AGE 55, YOU MAY ADD OR SUBSTITUTE ANY AGE(S) RELEVANT UNDER THE PLAN. FOR EXAMPLE, YOU MAY ADD OR SUBSTITUTE THE MAXIMUM BENEFIT FOR AGES 62 OR 60 FROM THE TABLE IN APPENDIX B. IF THE PLAN PROVIDES FOR NORMAL RETIREMENT BEFORE AGE 65, YOU MUST INCLUDE THE NORMAL RETIREMENT AGE.]

[IF THE PLAN DOES NOT PROVIDE FOR COMMENCEMENT OF BENEFITS BEFORE AGE 65, YOU MAY OMIT THIS PARAGRAPH.]

- The maximum benefit will also be reduced when a benefit is provided for a survivor.

The PBGC does not guarantee certain types of benefits.

[INCLUDE THE FOLLOWING GUARANTEE LIMITS THAT APPLY TO THE BENEFITS AVAILABLE UNDER YOUR PLAN.]

- The PBGC does not guarantee benefits for which you do not have a vested right when a plan ends, usually because you have not worked enough years for the company.

- The PBGC does not guarantee benefits for which you have not met all age, service, or other requirements at the time the plan ends.

- Benefit increases and new benefits that have been in place for less than a year are not guaranteed. Those that have been in

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place for less than 5 years are only partly guaranteed.

- Early retirement payments that are greater than payments at normal retirement age may not be guaranteed. For example, a supplemental benefit that stops when you become eligible for Social Security may not be guaranteed.

- Benefits other than pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay, are not guaranteed.

- The PBGC generally does not pay lump sum exceeding \$5,000.

WHERE TO GET MORE INFORMATION

Your plan, [EIN-PN], is sponsored by [CONTRIBUTING SPONSOR(S)]. If you

would like more information about the funding of your plan, contact [INSERT NAME, TITLE, BUSINESS ADDRESS AND PHONE NUMBER OF INDIVIDUAL OR ENTITY].

For more information about the PBGC and the benefits it guarantees, you may request a free copy of “Your Guaranteed Pension” by writing to Consumer Information Center, Dept. YGP, Pueblo, Colorado 81009.

[THE FOLLOWING SENTENCE MAY BE INCLUDED:] “Your Guaranteed Pension” is also available from the PBGC Homepage on the World Wide Web at <http://www.pbgc.gov>.

Issued: [INSERT AT LEAST MONTH AND YEAR]

[61 FR 34026, July 1, 1996, as amended at 63 FR 38306, July 16, 1998; 65 FR 75165, Dec. 1, 2000]

APPENDIX B TO PART 4011—TABLE OF MAXIMUM GUARANTEED BENEFITS

| If a plan terminates in— | The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below: | | | | | | | |
|--------------------------|---|-------------|------------|-------------|------------|-------------|------------|-------------|
| | Age 65 | | Age 62 | | Age 60 | | Age 55 | |
| | Monthly | Annual | Monthly | Annual | Monthly | Annual | Monthly | Annual |
| 1995 | \$2,573.86 | \$30,886.32 | \$2,033.35 | \$24,400.20 | \$1,673.01 | \$20,076.12 | \$1,158.24 | \$13,898.88 |
| 1996 | \$2,642.05 | \$31,704.60 | \$2,087.22 | \$25,046.64 | \$1,717.33 | \$20,607.96 | \$1,188.92 | \$14,267.04 |
| 1997 | \$2,761.36 | \$33,136.32 | \$2,181.47 | \$26,177.64 | \$1,794.88 | \$21,538.56 | \$1,242.61 | \$14,911.32 |
| 1998 | \$2,880.68 | \$34,568.16 | \$2,275.74 | \$27,308.88 | \$1,872.44 | \$22,469.28 | \$1,296.31 | \$15,555.72 |
| 1999 | \$3,051.14 | \$36,613.68 | \$2,410.40 | \$28,924.80 | \$1,983.24 | \$23,798.88 | \$1,373.01 | \$16,476.12 |
| 2000 | \$3,221.59 | \$38,659.08 | \$2,545.06 | \$30,540.72 | \$2,094.03 | \$25,128.36 | \$1,449.72 | \$17,396.64 |
| 2001 | \$3,392.05 | \$40,704.60 | \$2,679.72 | \$32,156.64 | \$2,204.83 | \$26,457.96 | \$1,526.42 | \$18,317.04 |
| 2002 | \$3,579.55 | \$42,954.60 | \$2,827.84 | \$33,934.08 | \$2,326.71 | \$27,920.52 | \$1,610.80 | \$19,329.60 |

The maximum guaranteed benefit for an individual starting to receive benefits at ages other than those listed above can be determined by applying the PBGC's regulation

on computation of maximum guaranteeable benefits (29 CFR 4022.22).

[61 FR 34026, July 1, 1996, as amended at 61 FR 65474, Dec. 13, 1996; 62 FR 65608, Dec. 15, 1997; 63 FR 63179, Nov. 12, 1998; 64 FR 67164, Dec. 1, 1999; 65 FR 75165, Dec. 1, 2000; 66 FR 59693, Nov. 30, 2001]